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_	APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/530,936 08/18/2		08/18/2000	Detlef Pickert	11150/8	6338	
		•		EXAMINER		
	ONE BROAD NEW YORK,	WAY		MCCALL, ERIC SCOTT		
	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,			ART UNIT	PAPER NUMBER	
		*		2855		
				DATE MAILED: 02/07/2003	3	

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.		Applicant(s)	ev -		
i.		09/530,936		PICKERT ET AL.			
	Office Action Summary	Examin r		Art Unit			
	•	Eric S. McCall		2855			
	- Th MAILING DATE of this communication app	ars on the cover	sh et with the o	orrespondence addr	ss		
Period for	r Reply						
THE N - Extension - If the - If NO - Failur	ORTENED STATUTORY PERIOD FOR REPL'MAILING DATE OF THIS COMMUNICATION. sions of time may be available under the provisions of 37 CFR 1.1 SIX (6) MONTHS from the mailing date of this communication. period for reply specified above is less than thirty (30) days, a repl period for reply is specified above, the maximum statutory period to e to reply within the set or extended period for reply will, by statute apply received by the Office later than three months after the mailing of patent term adjustment. See 37 CFR 1.704(b).	36(a). In no event, however, within the statutory mini will expire S	ver, may a reply be tin mum of thirty (30) day SIX (6) MONTHS from	nely filed  /s will be considered timely.  In the mailing date of this comi  TO (35 U.S.C. § 133).	munication.		
1)🛛	Responsive to communication(s) filed on 13	<u> January 2003</u> .					
2a)□	This action is <b>FINAL</b> . 2b)⊠ Th	his action is non-fi					
3)	Since this application is in condition for allow closed in accordance with the practice under	rance except for for Ex parte Quayle,	rmal matters, p 1935 C.D. 11,	prosecution as to the 453 O.G. 213.	merits is		
Dispositi	on of Claims						
4) 🖾	Claim(s) 33,36 and 39-52 is/are pending in the	ne application.					
	4a) Of the above claim(s) is/are withdra	awn from consider	ation.				
5)⊠	Claim(s) <u>41-44 and 48-52</u> is/are allowed.						
6)⊠	Claim(s) 33,36,39,40 and 45-47 is/are rejected	ed.					
7)	Claim(s) is/are objected to.						
8)	Claim(s) are subject to restriction and/	or election require	ment.				
	ion Papers						
9)[	The specification is objected to by the Examin	ier.	had to by the Ev	aminer			
10)	The drawing(s) filed on is/are: a) acc	epted or b) object	ld in abevance	See 37 CFR 1.85(a).			
	Applicant may not request that any objection to to The proposed drawing correction filed on 19 J	the drawing(s) be ne	annroved b)	disapproved by the l	Examiner.		
11)⊠	The proposed drawing correction filed on 1950 If approved, corrected drawings are required in r	enly to this Office at	ction.				
	The oath or declaration is objected to by the E	-Aurille					
Priority	under 35 U.S.C. §§ 119 and 120  Acknowledgment is made of a claim for forei	an priority under 3	5 U.S.C. § 119	(a)-(d) or (f).			
		gri priority under e					
a)	All b) Some * c) None of:	nts have been rec	eived				
	<ul><li>1.   Certified copies of the priority docume</li><li>2.   Certified copies of the priority docume</li></ul>	nts have been rec	eived in Applic	ation No.			
	—	into nave been rec	nave been rece	ived in this National	Stage		
	application from the International t	st of the certified	copies not rece	ived.			
	9(e) (to a provisional	application).					
	<ul> <li>14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional a) The translation of the foreign language provisional application has been received.</li> <li>15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.</li> </ul>						
		John Priority William					
2) [] No	ent(s) tice of References Cited (PTO-892) tice of Draftsperson's Patent Drawing Review (PTO-948) prmation Disclosure Statement(s) (PTO-1449) Paper No(s	4) [ 5) [ 5) 6) [	Notice of Inform	nary (PTO-413) Paper No nal Patent Application (PT	(s) O-152)		

# METHOD AND DEVICE FOR MONITORING AND/OR DETERMINING MOTOR OIL QUALITY

## **NON-FINAL OFFICE ACTION**

In response to the Applicant's request for reconsideration (paper no. 18) dated Jan. 13, 2003.

### **DRAWINGS**

As noted in the advisory action (paper 15) dated July 09, 2002, the proposed drawing correction of June 19, 2002 has been approved. Accordingly, all objections to the drawings as stated in the final office action of March 14, 2002 have been overcome.

A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

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#### **CLAIMS**

#### 35 U.S.C. 112

As noted in the advisory action (paper 15) dated July 09, 2002, the Applicant's amendments to the claims of June 19, 2002 have overcome the rejection of claims 33, 36, 39-44, and 49-52 under 35 U.S.C. 112, second paragraph, as stated in the final office action of March 14, 2002.

#### 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 33, 36, 39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vermeiren (4,888,976).

With regards to claim 39, Vermeiren teaches a method of determining motor oil quality, comprising the steps of:

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determining a viscosity of the motor oil during operation of an internal combustion engine (col. 1, lines 18-21); and

determining and evaluating a change of the viscosity as an inherent function of a temperature and as a function of the power required to obtain a given motor speed (col. 1, lines 18-21).

Although Vermeiren fails to explicitly teach that the change in viscosity is a function of engine temperature, the Examiner contends that such a teaching is inherent because as it is very well known to one having ordinary skill in the art, as surely the Applicant can appreciate, oil viscosity is very dependent upon engine temperature.

Nonetheless, Vermeiren fails to teach the determining of a change in oil viscosity as a function of frictional torque of the engine. However, it would have been obvious to one having ordinary skill in the art armed with said teaching to determine a change in oil viscosity as a function of frictional torque of the engine. The motivation being that Vermeiren discloses in col.

1, lines 11-13 that oil viscosity is determined from a measured motor parameter. The Applicant has claimed that the oil viscosity is determined from a measured motor parameter in that frictional torque is a measured motor parameter. Continuing, the Applicant has defined the frictional torque as being the difference between the starter power and the acceleration power. As such, Vermeiren teaches (col. 1, lines 18-20) that the measured motor parameter is the power required to obtain a given motor speed which would suggest to one having ordinary skill in the

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art as being the frictional power from which the Applicant claimed frictional torque is determined.

With regard to claims 33 and 36, Vermeiren suggests a controller (13) for processing and transforming measured data, and a memory unit (12) with characteristic curves therein.

Claims 33, 36, and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vermeiren (4,888,976).

Claim 45 parallels that of claim 39 but does require the particulars of the engine temperature as in claim 39 nor the determining of the change in oil viscosity. Thus, the Applicant's attention is directed to the above remarks regarding claim 39 minus the remarks about viscosity being dependent upon the engine temperature.

Regarding claims 33 and 36, see the corresponding above remarks.

With regards to claim 46, in addition to the above remarks, the suggestion of determining engine frictional torque corresponds to "estimating" engine frictional torque.

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Response to Arguments

In response to the Applicant's arguments, said arguments have been found to be

persuasive. As such, the teaching of Dickert et al. (6,223,589) has been withdrawn from the

rejection of claims 33, 36, 39, and 40 under 35 USC 103(a). Accordingly, this action is made

"non-final" because the new grounds of rejection are based only the Applicant's arguments.

Allowable Subject Matter

Claims 41-44 and 48-52 have been found to be allowable over the prior art.

**CONCLUSION** 

Any inquiry concerning this communication should be directed to Eric S. McCall at

telephone number (703) 308-6968.

Eric S. McCall Primary Examiner

A.U. 2855

Feb. 05, 2003